

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P. No.05/2022

Smt. Kanika Sarkar, W/O. Sri Ashok Kumar Gupta, D/O. Lt. Nripendra Sarkar, Radhanagar, P.O.-Radhanagar, P.S.-West Agartala, District-West Tripura.

..... Petitioner(s)

V E R S U S

Sri Ashok Kumar Gupta, S/O. Lt. Anil Gupta, resident of East Shibnagar, P.S.-East Agartala, P.O.-Agartala College, District-West Tripura.

.....Respondent(s)

For Petitioner(s) : Mrs. Sujata Deb (Gupta), Advocate.

For Respondent(s) : Mr. C.S. Sinha, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and Judgment : 6th February, 2023.

JUDGMENT & ORDER (ORAL)

Heard Mrs. Sujata Deb (Gupta), learned counsel appearing for the petitioner-wife. Also heard Mr. C.S. Sinha, learned counsel appearing for the respondent-husband.

2. By means of this revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure (Cr.P.C., for short), the petitioner has challenged the judgment dated 15.09.2021 passed by the learned Additional Sessions Judge, Court No.5, West Tripura, Agartala in case No. Criminal Appeal 07 of 2020 whereby the learned Judge has

modified the judgment dated 28.03.2019 passed by the learned Judicial Magistrate 1st Class, Court No.5, Agartala, West Tripura in case No. CR 507 of 2015 directing the respondent-husband to take the petitioner-wife and her two sons to share household and provide them comfortable accommodation and shall not subject them, failing which he has to pay monthly maintenance of Rs.3,000/- each, i.e. in total Rs.9,000/- per month to them.

3. Petitioner has prayed for the following reliefs:

- "(i) Admit the petition of the appellant.
- (ii) Call for records from the Trial Court in CR 507/2015, Ld. Judicial Magistrate First Class, Court No.5, Agartala, West Tripura as well as the records of Appellate Court below in Criminal Appeal No.07/2020, Ld. Addl. Sessions Judge, West Tripura, Agartala, Court No.5.
- (iii) Issue notice upon the respondent.
- (iv) After hearing the parties, interfere and modify the Judgment and order dated 15.09.2021 passed in Criminal Appeal No.07/2020 passed by Ld. Addl. District Sessions Judge, West Tripura, Agartala and pass an order to direct the respondent to pay compensation/damages for the injuries including mental torture and emotional distress of the appellant caused by the act of domestic violence committed by the respondent.

AND

- (v) Pass such further order or orders, direction or directions as the Hon'ble Court may deem fit and proper having regard to the circumstances of the case."

4. Case of the petitioner-wife as it revealed from the judgment of trial Court as well as from record, in a nutshell, is that the petitioner Smt. Kanika Sarkar was married to the respondent Sri Ashok Kumar Gupta on 10.03.2010 and at the time of marriage as per demand dowry of Rs.1,00,000/- was given in cash to the respondent along with other movable articles. But within 15 days of the marriage, the respondent started demanding more money from the petitioner who somehow managed to handover Rs.85,000/- to the respondent. Subsequently, the respondent off and on demanded money as dowry from the petitioner and when she expressed her inability to meet up his demand, the respondent started to beat her up both physically and mentally. Finding no other alternative, the petitioner filed a complaint against her husband and in laws before the East Agartala P.S. under Sections 498A/34 of IPC. Meanwhile, twin sons were born out of their wedlock and the criminal case was disposed of on compromise. But the torture upon the petitioner was continued by the respondent and his family members and in June, 2013 petitioner was driven out from her matrimonial home along with her twins. Thereafter, the petitioner filed a case for maintenance and the learned Trial Court vide judgment dated 28.03.2019 allowed her maintenance. Aggrieved thereby, the respondent-husband preferred an appeal before the learned Addl. Sessions

Judge, Court No.5, West Tripura, Agartala whereby the learned Addl. Sessions Judge vide judgment dated 15.09.2021 allowed the appeal modifying the judgment of the learned trial Court and granted maintenance for the two children only. Assailing the impugned judgment of the learned Addl. Sessions Judge, petitioner has preferred this revision petition. Hence, this case.

5. Mrs. Sujata Deb (Gupta), learned counsel appearing for the petitioner-wife, contends that the learned appellate Court without following the procedure under Section 22 of the Protection of Women from Domestic Violence Act has committed serious illegality and passed an order rejecting the petitioner of her entitlement to the maintenance which is liable to be modified. Counsel also contends that the learned appellate Court has failed to consider the basic conditions/ingredients for granting maintenance under the Domestic Violence Act which the petitioner was able to prove and as such, she is entitled to get maintenance for her mental and emotional distress caused by the act of domestic violence committed by the respondent-husband. The divorce case filed by the respondent-husband was dismissed and the RCR preferred by the petitioner was allowed but in spite of that the respondent is not agreed to take her back. Counsel further contends that the petitioner is now maintaining her two sons living in a separate mess and is

willing to reside with her husband. She also filed execution petition before the trial Court for getting maintenance but still the respondent is not giving the maintenance allowance. Accordingly, she prays for modification of the impugned judgment dated 15.09.2021 passed by the learned Addl. Sessions Judge modifying the judgment dated 28.03.2019 passed by the learned trial Court.

6. On the other hand, Mr. C.S. Sinha, learned counsel appearing for the respondent-husband, in rebuttal of the submissions advanced by the learned counsel for the petitioner-wife, contends that the petitioner after marriage with the respondent lived only two months with her husband and then she left her matrimonial home and moreover, she is a working lady in office and maintenance allowance @ Rs.15,000/- per month was being given by the respondent to her before filing of the appeal whereby the maintenance allowance was modified. Accordingly, he contends that there is no error in the judgment of the appellate Court and prays for dismissal of the revision petition.

7. Having considered the submissions of learned counsel for both the parties as well as evidence on record, this Court is of the considered view that the learned trial Court on appreciating all the relevant circumstances and proper application of mind has correctly come to the conclusion that the

respondent-husband committed domestic violence by way of economic abuse and allowed maintenance allowance in favour of the petitioner as well as her two sons. Considering the nature of the proceeding and the procedure required to be followed in such proceeding under the Domestic Violence Act which is proved on evidence, the appellate Court is not expected to interfere in the decision given by the learned trial Court and modify such order of maintenance which is not sustainable in law.

8. In view of above, the revision petition is allowed. The judgment dated 15.09.2021 passed by the learned Additional Sessions Judge, Court No.5, West Tripura, Agartala in case No. Criminal Appeal 07 of 2020 is hereby set aside. Consequently, the judgment dated 28.03.2019 passed by the learned Judicial Magistrate 1st Class, Court No.5, Agartala, West Tripura in case No. CR 507 of 2015 stands confirmed.

9. With the above observations, this criminal revision petition is allowed and disposed of. Send down the lower court records forthwith.

10. Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)

Pulak